IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 244 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH FOOD INSPECTOR SURAT MUNICIPAL CORPO.SURAT

Versus

RAMANBHAI MORARBHAI

Appearance:

MR KI SHAH for Petitioner

MRS KETTY A MEHTA for Respondent No. 1

MS HANSABEN PUNANI, APP for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. 1st respondent Ramanbhai Morarbhai faced charge of the offence punishable u/S. 16 (1) read with section 7 of the Prevention of Food Adulteration Act (for short

'PFA Act') at the complaint filed by the appellant herein before the Ld. Judicial Magistrate First Class (Municipal), Surat in Criminal Case No. 53/1983. The appellant will accordingly be referred to herein as 'the complainant' and the 1st respondent will be referred to as 'the accused'. The respondent no. 2 State of Gujarat has been represented by Ms. Hansaben Punani, Ld. APP.

2. As per the judgment and order dated 3/9/1987 rendered by the Ld. Magistrate the accused came to be convicted for the aforesaid offences and he was sentenced to undergo R.I. for a period of one year and pay fine ot Rs.2,000/-, in default to suffer R.I. for a period of one month. His conviction and sentence so rendered became the subject matter of Criminal Appeal No. 55 of 1987 before the Ld. Sessions Judge, Surat. After hearing the submissions made on behalf of both the parties, Ld. Sessions Judge allowed the appeal, set aside the conviction and sentence of the accused and rendered his acquittal for the offences with which he came to be charged. The complainant has been aggrieved with the said acquittal judgment and has moved this appeal with leave.

3. When this appeal came up for hearing before this Court, main grievance of the complainant was with regard to finding of the Ld. Sessions Judge regarding his eligibility for acting as the Food Inspector. His grievance is that when his appointment was made after considering his qualifications as per the notification exh. 10 and when on the basis of such notification the local authority also appointed him, the Ld. Sessions Judge ought not to have held against his eligibility for acting as the Food Inspector. It may be noted that the Ld. Sessions Judge has rendered acquittal not only on the ground of non-eligibility of the complainant to act as Food Inspector, but has also rendered acquittal on the ground that the very adulteration alleged against accused has not been established beyond reasonable doubt. It has to be noted that the appreciation of evidence, more particularly the report of Public Analyst by the Ld. Sessions Judge could not be assailed in this appeal.

It so happened that on 9/8/1983 the complainant had an occasion to take samples of buffalo milk from the accused and after following necessary formalities he had an occasion to get one of the samples being examined by the Public Analyst. The report of the Public Analyst is at exh. 19. The report would indicate that the sample of milk sent for analysis disclosed following result upon its analysis by the Public Analyst :-

Fat - 6.2% (Gerber's method)
Solids Not Fat - 8.3% (Gravimetric method)

Thus, the Public Analyst found that solids not fat in the sample milk was lower than the standard and, therefore, he opined that there was likelihood of addition of water to the extent of 8%. Dealing with this report Ld. Sessions Judge has observed as under in paras. 3 to 6 of his judgement :-

"3. Factually what has been disputed is the finding of the Public Analyst, namely, that on analysis the milk was found to contain 8 per cent additional water, on the basis of that, non-solid fat contents of the sample analysed, instead of being 9 per cent was substandard and it was found to be containing only 8-3 per cent solid fat. There seems to be a formula, whereby above finding relating to non-solid fats, additional water contents, etc. is worked out. The analysis has followed the Gerber Method, which has been held by several authorities to be not a very reliable method. The practice followed is first to employ the grevimatric method to find out the total solid contents of the given sample of milk, from which, on employing Gerber method, fat contents are worked out, and substracting the non-solid fat contents, the remaining is considered to be solid fat, and on that finding, with the help of the formula as stated above, water contents which are added, is worked out. Obviously therefore, if Gerber method is not found to be reliable, the finding of the non-solid fat worked out will also suffer from inaccuracy.

4. So far as the added water is concerned, Freezing Point test method is the one to be employed, with the help of which, directly that particular quantity could be measured without going in a round about way, as stated above. In the instant case, admittedly no such method has been employed. Taking the said factual aspect first, in this connection we have some decisions 1987 (2) F.A.C. p.58 as well as 1982 F.A.C. 314 (Gujarat decisions) and 1985 (1) F.A.C. 286 (Kerala decision), all going to show that, for determining the quantity of added water, Freezing Point test is the most reliable one and that alone will determine correctly the quantity of the added water. That being the main charge in

the instant case, obviously the said Freezing Point test having not been employed, the benefit should go to the accused appellant.

5. With regard to the Gerber method, the decision referred to above, i.e. 1987 (2) F.A.C. 58 is considered, and on that basis, with regard to the description already given of the method employed here for working out nonsolid fat, on which basis again, with the help of the formula, added water content has been worked out, the result will suffer from infirmity, because of the method employed.

6. Moreover, it may be noted that, the standard required for the non-solid fat is 9 per cent. By the finding given in the instant case, as per the report of the Analyst produced at Exh.19 the non-solid fat contents were found to be 8-3 per cent. So, there is a difference of 0-7 per cent, which can safely be said to be a marginal difference. When that aspect is considered in the light of the fact that what has been used is an inaccurate method known as Gerber method and not the usual and reliable method of Freezing Point test, the benefit should go to the accused, and accordingly, I decide that, the conviction on facts and merits could not be sustained."

4. It might be noted on going through the prescribed standards under the PFA Act in so far as buffalo milk is concerned, prescribed standard of fat is 6%; whereas in the present case it is found to be 6.2%, that would mean that .2% is more fat than the standard prescribed. It is no-doubt true that the prescribed standard for solid not fat is 9%, but it is found to be .7% less. Dealing with this aspect of the matter the Ld. Sessions Judge had an occasion to make above observations while referring to relevant decisions in that respect. The finding rendered by the Ld. Sessions Judge as per the observations reproduced hereinabove can hardly be assailed.

5. However, in my considered opinion the Ld. Sessions Judge has unnecessarily exerted in dealing with the question with regard to eligibiliy of complainant to act as a Food Inspector. In fact he himself has observed that the judgment would have come to an end on the aforesaid point and at that very stage and nothing further would have been required to be done in that

regard, but since the defence was taking further legal points, he had to deal with the same. In my considered opinion that was not the correct approach on the part of the Ld. Sessions Judge, particularly when the prosecution had placed on record required notification as well as the order of appointment on the basis of the notification. Even before this Court the questions have not been sought to be agitated by any one. Ld. Counsel for the accused has not remained present and, therefore, there is no scope for the question being agitated before this Court. Had she remained present and sought to argue the point, this Court would have disinclined to deal with the same in view of the fact that the prosecution did not establish the very basis of the charge against the accused.

In view of what is stated above, this appeal would fail. The same is accordingly dismissed.

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PVR.